IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 201

JOHN DALMER BENTON,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

PETITIONER'S REPLY BRIEF

In reply to the brief submitted by the Respondent, the Petitioner states the following argument.

ARGUMENT

The Maryland Rules of Procedure Allow the Reversal of an Invalid Conviction Regardless of Mootness.

The State of Maryland does not follow the mootness doctrine set out in *Hirabayashi* v. *United States*, 320 U.S. 81. Rule 764(a) of the Maryland Rules of Procedure on post conviction remedies provides that, "The court may correct an illegal sentence at any time." The Maryland Court of Appeals has consistently followed this rule and ordered the reversal of invalid convictions regardless of whether the sentence was ordered to be served concurrently with a valid conviction and regardless of whether

any sentence was imposed on the invalid conviction.[1] Illustratively, in *Marks* v. *State*, 230 Md. 108, 185 A2d 909 (1962), the appellant was charged in indictment No. 4073 with assault with intent to murder and in a second indictment, No. 4074, with assault with intent to maim and disfigure. Found guilty of both, appellant was sentenced to ten (10) years under the first indictment and a "like sentence" under the second indictment, the sentences to run concurrently. Holding that the verdict and sentence under the second indictment was null and void, because that indictment did not charge a crime known to the law of the State of Maryland, the court reversed the conviction and sentence rendered under the second indictment while affirming the valid conviction. To the same effect: *Hardesty* v. *State*, 223 Md. 559, 165 A2d 761 (1960); *Young* v. *State*, 220 Md. 95, 151 A2d 140 (1959); *Tucker* v. *State*, 237 Md. 422, 206 A2d 691 (1965).

It is respectfully submitted that in determining availability of relief for a conviction obtained in violation of the Federal Constitution, this Court should follow the Maryland post conviction remedy law. *Erie Railroad Company* v. *Tompkins*, 304 U.S. 64; *Case* v. *Nebraska*, 381 U.S. 336.

Respectfully submitted,

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[1] On page 6, footnote 3, of the Respondent's Brief, it is indicated that Maryland follows the *Hirabayashi* rule. This is not a fact.